

## § 204.305

any legal services performed for a parent who consents to the adoption of a child or relinquishes the child to an agency; and

(9) Any other service the payment for which the officer finds, on the basis of the facts of the case, was reasonably necessary.

(c) *Department of State requirements.* See 22 CFR 96.34, 96.36 and 96.40 for additional regulatory information concerning fees in relation to Convention adoptions.

## § 204.305 State preadoption requirements.

State preadoption requirements must be complied with when a child is coming into the State as a Convention adoptee to be adopted in the United States. A qualified Convention adoptee is deemed to be coming to be adopted in the United States if either of the following factors exists:

(a) The applicant/petitioner will not complete the child's adoption abroad; or

(b) In the case of a married applicant/petitioner, the child was adopted abroad only by one of the spouses, rather than by the spouses jointly, so that it will be necessary for the other spouse to adopt the child after the child's admission.

## § 204.306 Classification as an immediate relative based on a Convention adoption.

(a) Unless 8 CFR 204.309 requires the denial of a Form I-800A or Form I-800, a child is eligible for classification as an immediate relative, as defined in section 201(b)(2)(A)(i) of the Act, on the basis of a Convention adoption, if the U.S. citizen who seeks to adopt the child establishes that:

(1) The United States citizen is (or, if married, the United States citizen and the United States citizen's spouse are) eligible and suitable to adopt; and

(2) The child is a Convention adoptee.

(b) A U.S. citizen seeking to have USCIS classify an alien child as the U.S. citizen's child under section 101(b)(1)(G) of the Act must complete a two-step process:

(1) First, the U.S. citizen must file a Form I-800A under 8 CFR 204.310;

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(2) Then, once USCIS has approved the Form I-800A and a child has been identified as an alien who may qualify as a Convention adoptee, the U.S. citizen must file a Form I-800 under 8 CFR 204.313.

## § 204.307 Who may file a Form I-800A or Form I-800.

(a) *Eligibility to file Form I-800A.* Except as provided in paragraph (c) of this section, the following persons may file a Form I-800A:

(1) An unmarried United States citizen who is at least 24 years old and who is habitually resident in the United States, as determined under 8 CFR 204.303(a); or

(2) A married United States citizen, who is habitually resident in the United States, as determined under 8 CFR 204.303(a), and whose spouse will also adopt any child adopted by the citizen based on the approval of a Form I-800A; and

(3) The citizen's spouse must also be either a U.S. citizen, a non-citizen U.S. national, or an alien who, if living in the United States, holds a lawful status under U.S. immigration law. If an alien spouse is present in a lawful status other than the status of an alien lawfully admitted for permanent residence, such status will be a factor evaluated in determining whether the family's situation is sufficiently stable to support a finding that the applicant is suitable as the adoptive parents of a Convention adoptee.

(b) *Eligibility to file a Form I-800.* Except as provided in paragraph (c) of this section, the following persons may file a Form I-800:

(1) An unmarried United States citizen who is at least 25 years old and who is habitually resident in the United States, as determined under 8 CFR 204.303(a); or

(2) A married United States citizen, who is habitually resident in the United States as determined under 8 CFR 204.303(a), and whose spouse will also adopt the child the citizen seeks to adopt. The spouse must be either a United States citizen or a non-citizen U.S. national or an alien who, if living in the United States, holds a lawful status under U.S. immigration law; and

(3) The person has an approved and unexpired Form I-800A.

(c) *Exceptions.* (1) No applicant may file a Form I-800A, and no petitioner may file a Form I-800, if:

(i) The applicant filed a prior Form I-800A that USCIS denied under 8 CFR 204.309(a); or

(ii) The applicant filed a prior Form I-600A under 8 CFR 204.3 that USCIS denied under 8 CFR 204.3(h)(4); or

(iii) The petitioner filed a prior Form I-800 that USCIS denied under 8 CFR 204.309(b)(3); or

(iv) The petitioner filed a prior Form I-600 under 8 CFR 204.3 that USCIS denied under 8 CFR 204.3(i).

(2) This bar against filing a subsequent Form I-800A or Form I-800 expires one year after the date on which the decision denying the prior Form I-800A, I-600A, I-800 or I-600 became administratively final. If the applicant (for a Form I-800A or I-600A case) or the petitioner (for a Form I-800 or I-600 case) does not appeal the prior decision, the one-year period ends one year after the date of the original decision denying the prior Form I-800A, I-600A, I-800 or I-600. Any Form I-800A, or Form I-800 filed during this one-year period will be denied. If the applicant (for a Form I-800A or Form I-600A case) or petitioner (for a Form I-800 or I-600 case) appeals the prior decision, the bar to filing a new Form I-800A or I-800 applies while the appeal is pending and ends one year after the date of an Administrative Appeals Office decision affirming the denial.

(3) Any facts underlying a prior denial of a Form I-800A, I-800, I-600A, or I-600 are relevant to the adjudication of any subsequently filed Form I-800A or Form I-800 that is filed after the expiration of this one year bar.

#### § 204.308 Where to file Form I-800A or Form I-800.

(a) *Form I-800A.* An applicant must file a Form I-800A with the USCIS office identified in the instructions that accompany Form I-800A.

(b) *Form I-800.* After a Form I-800A has been approved, a petitioner may file a Form I-800 on behalf of a Convention adoptee with the stateside or overseas USCIS office identified in the instructions that accompany Form I-800.

The petitioner may also file the Form I-800 with a visa-issuing post that would have jurisdiction to adjudicate a visa application filed by or on behalf of the Convention adoptee, when filing with the visa-issuing post is permitted by the instructions that accompany Form I-800.

(c) *Final approval of Form I-800.* Once a Form I-800 has been provisionally approved under 8 CFR 204.313(g) and the petitioner has either adopted or obtained custody of the child for purposes of emigration and adoption, the Department of State officer with jurisdiction to adjudicate the child's application for an immigrant or non-immigrant visa has jurisdiction to grant final approval of the Form I-800. The Department of State officer may approve the Form I-800, but may not deny it; the Department of State officer must refer any Form I-800 that is "not clearly approvable" for a decision by a USCIS office having jurisdiction over Form I-800 cases. If the Department of State officer refers the Form I-800 to USCIS because it is "not clearly approvable," then USCIS has jurisdiction to approve or deny the Form I-800. In the case of an alien child who is in the United States and who is eligible both under 8 CFR 204.309(b)(4) for approval of a Form I-800 and under 8 CFR part 245 for adjustment of status, the USCIS office with jurisdiction to adjudicate the child's adjustment of status application also has jurisdiction to grant final approval of the Form I-800.

(d) *Use of electronic filing.* When, and if, USCIS adopts electronic, internet-based or other digital means for filing Convention cases, the terms "filing a Form I-800A" and "filing a Form I-800" will include an additional option. Rather than filing the Form I-800A or Form I-800 and accompanying evidence in a paper format, the submission of the same required information and accompanying evidence may be filed according to the digital filing protocol that USCIS adopts.

#### § 204.309 Factors requiring denial of a Form I-800A or Form I-800.

(a) *Form I-800A.* A USCIS officer must deny a Form I-800A if:

(1) The applicant or any additional adult member of the household failed